



Metropolitan Cases

Colorado River QSA-Related Litigation **(California Court of Appeals)**

The Sacramento Superior Court held hearings on July 17 and July 24 in the Quantification Settlement Agreement (QSA) cases and issued a number of rulings favorable to the water agency defendants. In its ruling after the July 17, 2008 hearing, the court found that various purported class action claims asserted by some of the plaintiffs were not appropriate for, and would not be treated as, class action claims in the QSA proceedings. In its ruling after the July 24, 2008 hearing, the court granted motions of the water agencies to strike some of the allegations and claims in the County of Imperial's recently filed petition for intervention in one of the QSA cases. After the July 24, 2008 hearing, the court also issued a decision on the scope of the validation proceeding. This decision narrowed the focus of the validation proceeding and appears to exclude some of the claims that the plaintiffs have been asserting. This ruling on the scope of validation also will help resolve disputes over discovery and augmentation of the administrative record which have been pending before the court. Further pretrial proceedings are expected later in the summer. (See General Counsel's April 2008 Activity Report)

Sacramento Regional Wastewater Treatment Plant

On July 15, Metropolitan, along with the Coalition for a Sustainable Delta, convened a panel of scientific experts to review the status of ongoing studies concerning the potential impacts of ammonia discharges on Delta smelt and primary productivity levels in the Delta. The Sacramento Regional Wastewater Treatment Plant is by far the largest discharger of ammonia in the Central Valley, and the State and Regional Water Quality Boards are supporting studies concerning the plant's potential ammonia impacts. It is anticipated that new information concerning ammonia impacts will play a role in the National Pollutant Discharge Elimination System (NPDES) permit

renewal process for the Sacramento Regional Wastewater Treatment Plant, which has been operating under a permit that was adopted in August 2000 and expired in August 2005. Metropolitan, along with a number of other water agencies that receive Delta water, have been actively involved in the NPDES permit renewal process. The Regional Board staff does not yet have a firm schedule for bringing a proposed permit to their Board for consideration, but they estimate that a draft permit might be completed in early 2009. In addition to the ammonia studies, other issues will likely affect the permit. These include the permitted discharge capacity in light of the CEQA litigation brought by Metropolitan and the other water agencies that found Sacramento Regional's environmental impact report for a proposed plant expansion inadequate for failing to analyze several water quality impacts. (Sacramento Regional County Sanitation District has appealed this decision and briefing in the Court of Appeal is now underway. See General Counsel's October 2007 and April 2008 Activity Reports)

Juli Smith v. Metropolitan, et al. (U.S. District Court)

On March 27, 2008, former Metropolitan employee Juli Smith, who was released during her probationary period, filed a complaint in Los Angeles County Superior Court against Metropolitan and five Metropolitan employees. Plaintiff alleged three causes of action against all Defendants: violation of Labor Code Section 6310 (a "whistleblower" protection statute), wrongful termination in violation of public policy, and intentional infliction of emotional distress. Plaintiff then amended her complaint to add a fourth cause of action for harassment and/or discrimination based on gender, against Metropolitan and three of the individual defendants. Plaintiff served two of the individual defendants with the summons and first amended complaint in April 2008. These defendants removed the case to the United States District Court, Central District, and filed a motion to dismiss and a motion to strike certain claims. Plaintiff did not oppose the motions and has agreed to file a second amended complaint



removing the challenged claims. Plaintiff served the other individual defendants with the summons and first amended complaint on July 14, 2008, and their response is due in September 2008. Plaintiff has not yet served Metropolitan. The parties appeared at the first Scheduling Conference on July 28, 2008, at which the Court set a trial date of June 9, 2009 and ordered the parties to participate in a settlement conference/mediation by March 2009. (See General Counsel's May and June 2008 Activity Reports)

AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

On September 7, 2007, Local 1902 filed four unfair practice charges alleging Metropolitan issued job announcements that unilaterally modified a job description by adding new duties to the Maintenance Mechanic I classification. The Public Employment Relations Board (PERB) issued a complaint on December 21, 2007, and PERB calendared a four-day trial for July 22-25, 2008. The Legal Department filed two motions to dismiss prior to trial. The first motion requested dismissal on the basis that a previous PERB decision acknowledged Metropolitan's prerogative to modify job announcements and job descriptions without Local 1902's agreement by virtue of provisions found in Local 1902's MOU and the Administrative Code. The second motion requested dismissal on the basis that Local 1902 failed to request "effects" bargaining in connection with the challenged job announcements. On July 11, Local 1902 withdrew its charges in response to Metropolitan's motions; and on July 14, the PERB administrative law judge assigned to this matter, Thomas J. Allen, dismissed the complaint.

AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

In July, Metropolitan received letters from the Public Employment Relations Board (PERB) dismissing unfair practice charges lodged by AFSCME Local 1902 in six different matters. Five of these matters challenged job announcements by claiming management modified job descriptions by adding new duties through job announcements. These charges challenged job postings for the Administrative Assistant II, Maintenance Worker II, Drafter II, Microbiologist and Engineer job classifications. The sixth charge challenged the purported assignment of chemist duties to the Laboratory Technologist classification. The Legal Department sought dismissal of the charges by filing positions statements. PERB's dismissal letters cited a recent ruling from a PERB administrative law judge who determined Local 1902 waived its right to bargain over the District's decision to change job descriptions and job announcements by virtue of provisions contained in Local 1902's MOU and the Administrative Code. The letters then note that, for the challenged job announcements and duties, Local 1902 failed to request "effects" bargaining. In light of this failure, PERB determined the District cannot be found to have breached its duty to bargain in good faith. Consequently, PERB dismissed these matters.

Supervisors Association v. Metropolitan (Public Employment Relations Board)

On July 9, 2008, the Supervisors Association lodged an unfair practice charge alleging Metropolitan committed an unfair labor practice when the District ended, without negotiation, the long-term vehicle assignment of certain members of the Supervisors Unit. On July 31, the Legal Department lodged Metropolitan's position statement in response, seeking dismissal of the charge on the basis that the terminations of vehicle assignments are in compliance with existing District policy.



Matters Involving Metropolitan

Pacific Coast Federation of Fishermen's Assns. v. Gutierrez (U.S. District Court)

On July 18, 2008, Judge Wanger issued his 118-page decision on the interim remedy proceeding in the salmon Endangered Species Act (ESA) case. While the decision denied plaintiffs' requests for immediate modifications to certain Central Valley Project operations, it found that the project operators had failed to demonstrate that interim operation of the projects would not threaten irreparable harm to the salmon. Thus, the July 18, 2008 decision had the effect of continuing the interim remedy proceeding.

In a July 23, 2008 order, the court directed the U.S. Bureau of Reclamation and California Department of Water Resources to submit status reports by August 29, 2008 explaining how their plans for project operations in the next nine months may affect salmon, and responding to the plaintiffs' remaining remedy proposals, including a proposal to cap exports at 7,000 cfs when salmon are near the project pumps. The federal and state contractors are also permitted to file their own status reports on August 29, 2008. Assistant General Manager Roger Patterson is preparing a declaration as part of the State Water Contractors' August 29, 2008 status report. The court also has scheduled a hearing on September 4, 2008 to consider the August 29, 2008 status reports and the scheduling of any future proceedings. (See General Counsel's October 2007 and April 2008 Activity Reports)

Solano County Water Agency et al. v. Department of Water Resources

Four state water contractors located north of the State Water Project's Delta pumping plant filed litigation against the Department of Water Resources on July 17, 2008, asserting that they are entitled to 100% deliveries of their SWP water under their state water contracts with DWR. The four agencies—Solano County Water Agency, Napa County Flood Control District, City of Yuba City and County of Butte—allege that they are located in the so-called area of origin of SWP water and, based on their location, are entitled to no-cut deliveries of SWP

water under the state water contract. Based on DWR's current 60% allocation for 2008, plaintiffs allege that DWR's failure to deliver their full Table A supplies will result in damages of about \$10 million this year. Previously, plaintiffs had filed a claim with the California Victim Compensation and Government Claims Board based on these alleged damages, which was denied on January 17, 2008. According to modeling done by plaintiffs, if their interpretation of the state water contract were followed, water supplies available to the remaining contractors would be reduced by 80,000 acre-feet in a dry year such as 1977 and more than 50,000 acre-feet each year in multiple year droughts such as occurred in 1988-92. Plaintiffs seek a declaratory judgment from the court that DWR may not impose shortages on them according to the state water contract and damages. Metropolitan staff is reviewing the complaint along with DWR and other export area state water contractors and is taking steps to intervene in support of DWR.

Butte Environmental Council v. Richvale Irrigation District (Butte County Superior Court)

The Richvale Irrigation District filed motions to quash service of the summons in this case on July 24, 2008. Richvale is one of the Sacramento Valley water districts that signed agreements with Metropolitan and other state water contractors to transfer water to them this year. Plaintiff Butte Environmental Council filed this case on April 23, 2008 alleging that Richvale failed to comply with CEQA prior to signing the agreement. However, plaintiff has failed to take any action since that date to move the litigation forward. Richvale's motions seek to quash plaintiff's purported service of summons and to dismiss the case based on plaintiffs' failure to personally serve Richvale within 10 days and failure to request a hearing within 90 days, both procedural steps specifically required by CEQA. The motions are scheduled to be heard on August 22, 2008. Richvale, Metropolitan and the other buyers have continued with the transfer despite the litigation. Water made available by following in Richvale's service area



has been accruing for the benefit of the buyers. (See General Counsel's April 2008 Activity Report)

California Fish and Game Commission Delta Smelt and Longfin Smelt Actions

The California Fish and Game Commission took two actions at its August 7, 2008 meeting that are of interest to Metropolitan.

First, it "up-listed" the Delta smelt from its current "threatened" to the more critical "endangered" status under the California Endangered Species Act (CESA), reflecting the dramatic decline in the species' population since it was first listed under CESA. As a practical matter, the change in status will have no impact on Metropolitan's State Water Project (SWP) supplies since the endangered designation itself does not require any additional actions or protections.

Second, the Commission extended its emergency regulation authorizing the SWP's incidental take of longfin smelt for an additional 90 days. The Commission accepted a petition to consider the longfin as a "candidate" for listing under CESA in February 2008. Under CESA a "candidate" species is subject to the prohibition against take pending the one-year process for the determination whether to list the species. At the same time it accepted the petition, the Commission adopted an emergency regulation authorizing SWP's incidental take. An emergency regulation is valid for 180 days, which in this case will expire on August 26, 2008, and may be extended for two additional 90-day periods. This is the first extension granted by the Commission, leaving a second extension available in November 2008 which would leave the take authorization in place until the Commission must act on the petition in February 2009. If the Commission decides to list the longfin smelt next February, it will consider a long-term take authorization for the SWP at the same time. The 90-day extension did not impose any new restrictions on SWP operations. (See General Counsel's February 2008 Activity Report)

***State Water Contractors v. FERC,* No. 06-74506**

On July 8, 2008, the U.S. Court of Appeals for the Ninth Circuit issued a memorandum decision denying the Petition for Review of a 2005 Federal Energy Regulatory Commission (FERC) decision submitted by Metropolitan and the State Water Contractors (SWC). The court determined that FERC properly placed the burden of proof on Metropolitan and the SWC to prove that the new, non-time differentiated grid-wide transmission access charge rate design proposed by the California Independent System Operator (CAISO) was unjust and unreasonable, relying upon FERC's prior acceptance of an interim, regional, flat rate design. The court also took no issue with FERC's conclusion that a transmission rate design that relies upon congestion pricing to send price signals satisfied Commission precedent and policy. It further found that, notwithstanding FERC's prior finding that the CAISO's congestion pricing scheme was fundamentally flawed, such flaws could be remedied in a separate proceeding. Early next year the CAISO is anticipated to commence implementation of fundamental changes in its market design that are intended to, among other things, fix its congestion pricing scheme.

Metropolitan pays approximately 70% of the State Water Project energy costs. Metropolitan and the other State Water Contractors would have benefitted from CAISO adoption of a time-differentiated transmission rate design because the SWP maximizes operation of its large pumps during the off-peak period, when energy costs are lower. Unfortunately, all CAISO Participating Transmission Owners strongly objected to CAISO adoption of a time-sensitive rate design since that would increase their costs, and the CAISO was unwilling to modify its rate design over their strong objections. FERC, in turn, was reluctant to find the CAISO's flat, hourly transmission rate design unjust and unreasonable, and the Ninth Circuit deferred to the broad discretion accorded FERC under the Federal Power Act.



Items of Interest

Finances

On July 31, 2008, Metropolitan issued \$79,045,000 Water Revenue Refunding Bonds, 2008 Series C, to refund \$70,140,000 of outstanding water revenue bonds issued in 1996 and produce anticipated savings of about \$726,000 per year through July 2023. The refinancing included termination of an interest rate swap transaction associated with the refunded bonds. Legal staff prepared the redemption and disclosure documents and assisted outside bond counsel.

Legal Department Primer

The Legal Department Primer, which provides directors with an overview of Metropolitan, how it operates, and the laws and regulations

impacting directors as public officers, has been updated and revised to present this material in a more convenient and manageable format. **The revised primer has been posted on the directors' web site and a hard copy is available upon request to the Legal Department.**

Administrative

Legislative Intent Service provided a program for the Legal Department on Ethics and Evidence of Legislative Intent. Topics included ethical and evidentiary issues when researching and using legislative history and strategies to successfully meet ethical and evidentiary obligations to clients and the court. The program qualified for continuing legal education credit for attorneys and paralegals by the California State Bar.